

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

ORIX CREDIT ALLIANCE, INC.,)

Plaintiff,)

v.)

DELENO MAX HARPER,)

Defendant.)

v.)

PEOPLES BANK & TRUST,)

Garnishee.)

Civil Action Number: 2:06-mc-03322-MEF

AFFIDAVIT AND RETURN OF SERVICE

STATE OF ALABAMA)

JEFFERSON COUNTY)

Before me, this undersigned authority, personally appeared Kenneth Johnson
who, being known to me and being by me duly sworn, deposes and says as follows:

1. I, Kenneth Johnson, am over the age of 19 years, not a party to this
litigation and qualified under Fed.R.Civ.P. 4 to be a special process server.

2. I served the attached documents upon Peoples Bank & Trust by delivering the
same to Sherilyn Bruhn, at Peoples Bank & Trust, Selma AL on Jan. 2
2007 at 9:05 o'clock A. m.

FURTHER THE AFFIANT SAITH NAUGHT.

Kenneth Johnson
AFFIANT

Sworn and subscribed before me this the
3rd day of January 2007.

Crystal Dawn McLean

[SEAL]

NOTARY PUBLIC

My Commission Expires: February 26, 2007

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

RECEIVED

ORIX Financial Services, Inc. f/k/a ORIX
Credit Alliance, Inc.,

Plaintiff,

v.

Deleno Max Harper,

Defendant.

Case Number: 2:06-mc-03322-MEF

2006 DEC 19 A 9:36

BERNARD P. HACKETT, CLERK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA


AFFIDAVIT FOR GARNISHMENT ON JUDGMENT

STATE OF ALABAMA)

JEFFERSON COUNTY)

Before me, the undersigned authority, personally appeared Jennifer A. Harris of Burr & Forman LLP, 420 North 20th Street, Birmingham, Alabama 35203, who being by me duly sworn deposes and says as follows:

I am the attorney for the above-named plaintiff; on the 25th day of April 2006 a judgment was rendered by the United States District Court for the Southern District of New York in favor of above named plaintiff ORIX Financial Services, Inc. f/k/a ORIX Credit Alliance, Inc. ("Judgment Creditor") and against the above-named defendant Deleno Max Harper (the "Judgment Debtor"), in the amount of \$172,948.17 with interest in the amount of \$140,781.30 plus attorneys' fees and costs in the amount of \$34,589.63 for a total judgment of \$348,319.10 which judgment was duly registered with the United States District Court for the Middle District of Alabama on the 6th day of June 2006. The Judgment Debtor is justly indebted to the Judgment Creditor in the amount of said judgment together with costs of this writ, less \$0.00 paid; and Peoples Bank and Trust, hereinafter referred to as the Garnishee, is believed to be indebted to the Judgment Debtor, or to have effects of the Judgment Debtor, in its possession or control, and I believe process of garnishment against the Garnishee is necessary to obtain satisfaction of said judgment.


Affiant

SWORN TO AND SUBSCRIBED BEFORE me this
13th day of December 2006.


NOTARY PUBLIC

My Commission Expires: March 28, 2007

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

ORIX Financial Services, Inc. f/k/a ORIX
Credit Alliance, Inc.,

Plaintiff,

v.

Deleno Max Harper,

Defendant.

)
)
)
) Case Number: 2:06-mc-03322-MEF
)
)
) WRIT OF GARNISHMENT
)
)
)

TO THE UNITED STATES MARSHAL FOR THE MIDDLE DISTRICT OF ALABAMA, OR TO
ANY OTHER AUTHORIZED OFFICER, GREETINGS:

You are hereby commanded forthwith to summon Peoples Bank and Trust as Garnishee in the
above-styled cause to appear within thirty (30) days from the date of service of this process, before the
United States District Court for the Middle District of Alabama, at Montgomery, Alabama, and file a
written answer, upon oath:

- (1) as to whether the Garnishee is or was indebted to the defendant Deleno Max Harper
Social Security Number 416-58-7330 at the time it received this process, or when it
makes its answer, or during the intervening time, and in what sum or sums;
- (2) whether it will be indebted to him in the future by existing contract or
- (3) whether by existing contract it is liable to him for the delivery of personal property or for
the payment of money which may be discharged by the delivery of personal property or
which may be payable in personal property; and
- (4) whether it has or not in its possession or under its control real or personal property or
things in action belonging to the said defendant.

Mailing the notarized answer to the Clerk of the Court constitutes making a proper appearance in the
court.

The United States Marshal, or other authorized officer, is hereby commanded to serve a copy of
the above Writ of Garnishment on the Garnishee, and make return of this Writ and the execution thereof,
according to law.

Issued this the 22nd day of December, 2006.

DEBRA P. HACKETT, CLERK
UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA
ONE CHURCH STREET
MONTGOMERY, AL 36104
(334) 954-3600

By: Debra P. Hackett
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

ORIX Financial Services, Inc. f/k/a ORIX)
Credit Alliance , Inc.,)
)
Plaintiff,) Case Number: 2:06-mc-03322-MEF
)
v.)
)
Deleno Max Harper,)
)
Defendant.)

NOTICE TO DEFENDANT OF WRIT OF GARNISHMENT

TO: Deleno Max Harper
2073 Fort Dale Road
Greenville, Alabama 36037

PLEASE TAKE NOTICE that copies of the attached Writ of Garnishment and Affidavit in Support of Garnishment have been issued to Garnishee Peoples Bank & Trust, in the above-styled case. Please note your rights set forth below.

RIGHT TO CLAIM EXEMPTION FROM GARNISHMENT

A process of garnishment has been delivered to you. This means that a Court may order your wages, money in a bank, sums owed to you, or other property belonging to you, to be paid into Court to satisfy a judgment against you.

Laws of the State of Alabama and of the United States provide that in some circumstances certain money and property may not be taken to pay certain types of court judgments, because certain money or property may be "exempt" from garnishment. For example, under State law, in some circumstances, up to \$3,000.00 in wages, personal property, including money, bank accounts, automobiles, appliances, etc., may be exempt from process of garnishment. Similarly, under Federal law, certain benefits and certain welfare payments may be exempt from garnishment. Benefits and payments ordinarily exempt from garnishment include, for example, Social Security payments, SSI payments, veteran's benefits, AFDC (welfare) payments, unemployment compensation payments and workers' compensation payments.

THESE EXAMPLES ARE FOR PURPOSES OF ILLUSTRATION ONLY. WHETHER YOU WILL BE ENTITLED TO CLAIM ANY EXEMPTION FROM THE PROCESS OF GARNISHMENT, AND, IF SO, WHAT PROPERTY MAY BE EXEMPT, WILL BE DETERMINED BY THE FACTS IN YOUR PARTICULAR CASE. IF YOU ARE UNCERTAIN AS TO YOUR POSSIBLE EXEMPTION RIGHTS, YOU SHOULD CONSULT A LAWYER FOR ADVICE.

TO CLAIM ANY EXEMPTION THAT MAY BE AVAILABLE TO YOU, YOU MUST PREPARE A "CLAIM OF EXEMPTION" FORM LISTING ON IT ALL YOUR WAGES AND PERSONAL PROPERTY; HAVE THE CLAIM OF EXEMPTION NOTARIZED; AND FILE IT IN THE CLERK'S OFFICE. ALSO, IT IS YOUR RESPONSIBILITY TO MAIL OR DELIVER A COPY OF THE CLAIM OF EXEMPTION TO THE PLAINTIFF WHO HAS A JUDGMENT AGAINST YOU. YOU MUST INDICATE ON THE CLAIM OF EXEMPTION THAT YOU FILE IN THE CLERK'S OFFICE WHETHER YOU MAILED OR DELIVERED THE COPY TO THE PLAINTIFF AND THE DATE ON WHICH YOU MAILED OR DELIVERED IT. THE CLERK CANNOT GIVE YOU LEGAL ADVICE. IF YOU NEED ASSISTANCE YOU SHOULD SEE A LAWYER.

If you file a claim of exemption, the plaintiff will have approximately ten (10) days to file a "contest" of your claim of exemption. If a contest is filed; a Court hearing will be scheduled and you will be notified of the time and place of the hearing. If the plaintiff does not file a contest, the property claimed by you as exempt will be released from the garnishment.

If you do not file a claim of exemption, your property may be turned over to the court and paid to the plaintiff on the judgment against you.

TO PROTECT YOUR RIGHTS, IT IS IMPORTANT THAT YOU ACT PROMPTLY. IF YOU HAVE ANY QUESTIONS, YOU SHOULD CONSULT A LAWYER.

DEBRA P. HACKETT, CLERK

By: Deanna M. Hoyt
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

ORIX Financial Services, Inc. f/k/a ORIX
Credit Alliance, Inc.,

Plaintiff,

v.

Deleno Max Harper,

Defendant.

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) Case Number: 2:06-mc-03322-MEF
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Now, on this day comes Peoples Bank and Trust, Garnishee in the above-styled action, and for answer to the writ of Garnishment served upon it on the ___ day of _____ 200___, upon oath says that it ☐ IS / ☐ IS NOT indebted to the defendant Deleno Max Harper at the time of service of the writ of Garnishment, or at the time of making this answer; and that Garnishee ☐ WILL / ☐ WILL NOT be indebted in the future to the defendant Deleno Max Harper by a contract then existing, or at the time of this process; and that Garnishee ☐ HAS / ☐ HAS NOT in its possession, or under its control, personal or real property, or things in action belonging to the defendant Deleno Max Harper.

Other (Explain)_____

And Garnishee having fully answered, prays to be discharged ☐ WITH / ☐ WITHOUT reasonable costs in this behalf expended.

Garnishee or Agent (Signature)

SWORN TO AND SUBSCRIBED BEFORE me this
the ___ day of _____ 200___.

NOTARY PUBLIC

My Commission Expires:_____

Instructions For Determining the Percentage of Wages, Salary or Other Compensation to be Withheld

I. GARNISHMENTS TO COLLECT JUDGMENTS ARISING FROM SITUATIONS OTHER THAN CONSUMER LOANS, CONSUMER CREDIT SALES OR CONSUMER LEASES ARE SUBJECT TO RESTRICTIONS OF: §6-10-7, Code of Alabama 1975, and Title 15, §1673, United States Code ("U.S.C."). Under Alabama and federal law, the amount subject to garnishment to collect such judgments shall not exceed the **LESSER** of:

- (1) twenty-five (25) percent of "disposable earnings" for the week **OR**
- (2) the amount by which "disposable earnings" for the week exceed thirty (30) times the federal minimum hourly wage in effect at the time earnings are payable.

II. GARNISHMENTS TO COLLECT JUDGMENTS ARISING FROM CONSUMER LOANS, CONSUMER CREDIT SALES OR CONSUMER LEASES ARE SUBJECT TO THE RESTRICTIONS OF: §5-19-15, Code of Alabama 1975, as amended by Act 88-294, effective April 12, 1988.

A. Under this law, if the debt or demand was created ON OR AFTER April 12, 1988, the amount subject to garnishment shall not exceed the **LESSER** of:

- (1) twenty-five (25) percent of "disposable earnings" for the week **OR**
- (2) the amount by which "disposable earnings" for the week exceed thirty (30) times the federal minimum hourly wage in effect at the time the earnings are payable.

B. If the debt or demand was created BEFORE April 12, 1988, the amount subject to garnishment shall not exceed the **LESSER** of:

- (1) twenty (20) percent of "disposable earnings" for the week **OR**
- (2) the amount by which "disposable earnings" for the week exceed fifty (50) times the federal minimum hourly wage in effect at the time the earnings are payable.

DISPOSABLE EARNINGS DEFINED: An employee's "disposable earnings" means that part of earnings of an individual remaining after deduction of amounts required by law to be withheld such as Federal Income Tax, Federal Social Security Tax, and State and Local Taxes.

NOTICE TO GARNISHEE

NOTE: If you have in your possession or control property or money belonging to the Defendant (**which is not wages, salary or other compensation**), you should hold the property or money subject to the orders of the Court. The formula outlined below only applies if the property sought to be garnished is wages, salary or other compensation of the Defendant.

(Use the following formula to calculate a garnishment of wages, salary or other compensation)

- (1) Calculate "disposable earnings" for the week (see definition of "disposable earnings" above.
- (2) If the twenty five (25) percent block is checked on the front of this form, multiply the "disposable earnings" amount by twenty five (25) percent. Multiply the "Minimum wage amount" (in effect at the time the earnings are payable by you) by thirty (30).

OR

- (3) If the twenty (20) percent block is checked on the front of this form, multiply the "disposable earnings" amount by twenty (20) percent. Multiply the "minimum wage amount" (in effect at the time the earnings are payable by you) by fifty (50).
- (4) After the calculation is made in accordance with (2) or (3) above (whichever is applicable), the amount of the garnishment for the week is the **LESSER** amount. Withhold this amount and pay it into Court as instructed in the "Writ of Garnishment" on the front of this form.

(5) THE CLERK AND OTHER COURT PERSONNEL CANNOT GIVE YOU LEGAL ADVICE, IF YOU NEED ASSISTANCE YOU SHOULD CONSULT A LAWYER FOR ADVICE.

PROTECTION AGAINST DISCHARGE: Title 15, §1674, U.S.C., prohibits an employer from discharging any employee because his or her earnings have been subject to garnishment for any one indebtedness.

NOTICE TO DEFENDANT OF RIGHT TO CLAIM EXEMPTION FROM GARNISHMENT

A process of garnishment has been delivered to you. This means that a court may order your wages, money in a bank, sums owed to you, or other property belonging to you, to be paid into court to satisfy a judgment against you.

Laws of the State of Alabama and of the United States provide that in some circumstances certain money and property may not be taken to pay certain types of court judgments, because certain money or property may be "exempt" from garnishment. For example, under state law, in some circumstances, up to \$3,000.00 in wages, personal property, including money, bank accounts, automobiles, appliances, etc., may be exempt from process of garnishment. Similarly, under federal law, certain benefits and certain welfare payments may be exempt from garnishment. Benefits and payments ordinarily exempts from garnishment include, for example, social security payments, SSI payments, veteran's benefits, AFDC (welfare) payments, unemployment compensation payments and workmen's compensation payments.

THESE EXAMPLES ARE FOR PURPOSES OF ILLUSTRATION ONLY. WHETHER YOU WILL BE ENTITLED TO CLAIM ANY EXEMPTION FROM THE PROCESS OF GARNISHMENT, AND, IF SO, WHAT PROPERTY MAY BE EXEMPT, WILL BE DETERMINED BY THE FACTS IN YOUR PARTICULAR CASE. IF YOU ARE UNCERTAIN AS TO YOUR POSSIBLE EXEMPTION RIGHTS, YOU SHOULD CONSULT A LAWYER FOR ADVICE.

TO CLAIM ANY EXEMPTION THAT MAY BE AVAILABLE TO YOU, YOU MUST PREPARE A "CLAIM OF EXEMPTION" FORM LISTING ON IT ALL OF YOUR WAGES AND PERSONAL PROPERTY; HAVE THE CLAIM OF EXEMPTION NOTARIZED; AND FILE IT IN THE CLERK'S OFFICE. ALSO, IT IS YOUR RESPONSIBILITY TO MAIL OR DELIVER A COPY OF THE CLAIM OF EXEMPTION TO THE PLAINTIFF WHO HAS A JUDGMENT AGAINST YOU. YOU MUST INDICATE ON THE CLAIM OF EXEMPTION THAT YOU FILE IN THE CLERK'S OFFICE WHETHER YOU MAILED OR DELIVERED THE COPY TO THE PLAINTIFF AND THE DATE ON WHICH YOU MAILED OR DELIVERED IT. THE CLERK CANNOT GIVE YOU LEGAL ADVICE. IF YOU NEED ASSISTANCE, YOU SHOULD SEE A LAWYER.

If you file a claim of exemption, the Plaintiff will have approximately then (10) days to file a "contest" of your claim of exemption. If a contest is filed, a Court hearing will be scheduled and you will be notified of the time and place of the hearing. If the Plaintiff does not file a contest, the property claimed by you as exempt will be released from the garnishment.

If you do not file a claim of exemption, your property may be turned over to the court and paid to the Plaintiff on the judgment against you.

TO PROTECT YOUR RIGHTS, IT IS IMPORTANT THAT YOU ACT PROMPTLY. IF YOU HAVE ANY QUESTIONS, YOU SHOULD CONSULT A LAWYER.

NOTICE TO PLAINTIFF OF RIGHT TO CONTEST CLAIM OF EXEMPTION OF DEFENDANT

If a "Claim of Exemption" is filed in the Clerk's office and mailed or delivered to you by the Defendant, you have approximately ten (10) days to file a "Contest" to the Claim of Exemption with the Clerk of the Court.

If a Contest is timely filed, a court hearing will be scheduled within seven (7) days (or on the next business day thereafter if the court is not open on the seventh day). You and the Defendant will be notified of the time and place of the hearing.

If you fail to make timely Contest of the Claim of Exemption, after fifteen (15) calendar days from the filing of such claim by the Defendant the Process of Garnishment and any writ of garnishment issued therein shall be dismissed or, where appropriate, modified to the extent necessary to give effect to the claimed exemptions.

IF YOU ARE UNCERTAIN AS TO HOW TO FILE A CONTEST TO THE CLAIM OF EXEMPTION, YOU SHOULD CONSULT A LAWYER FOR ADVICE. THE CLERK AND OTHER COURT PERSONNEL CANNOT GIVE YOU LEGAL ADVICE.